IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1312 OF 2006
IN
NOTICE NO.81 OF 2003
IN
EXECUTION APPLICATION NO.242 OF 2002
IN
WRIT PETITION NO.1770 OF 1990

Rev.Fr.Joe D.S.J. ....Petitioners
V/s.
The State of Maharashtra & Ors. ....Respondents

Ms.Sowmya Srikrishna i/b Kanga & Co. for the Petitioners.

CORAM : S.J. VAZIFDAR, J.
DATED : 4TH OCTOBER, 2007.

P.C. :

1. By this Chamber Summons, the Petitioners seek an order directing the Court Receiver to hand over possession of four flats being Flat Nos.A-1 to A-4 to the Petitioners 4 as per the order of this Court dated 9.9.2004. Ms.Srikrishna, the learned counsel appearing on behalf of the Petitioners state that these four flats have in fact now been handed over to the Petitioners in compliance with the said order.

2. The Petitioners have also sought an order directing the Court Receiver to hand over possession

of the remaining 18 flats referred to in prayer (b) of this Chamber Summons.

3. The disputes and differences between the parties pertained to the learned Charity Commissioner sanctioning an agreement for sale entered into between the Petitioners and Respondent No.3. This permission was challenged by the Petitioner in the above Writ Petition. The matter was settled between the parties in terms of the consent terms entered into between them dated 21.12.1990. The Writ Petition was disposed of by an order dated 21.12.1990 passed in terms of the said consent terms.

4. Under clause 2 of the consent terms it was agreed that in consideration of the purchase of the property, Respondent No.3 would construct inter-alia said 22 flats. The said 22 flats and a sum of Rs.40.00 lakhs were agreed to be accepted in full and final consideration for purchase of the suit property. Under clause 4, Respondent No.3 is required to hand over possession of the said 22 flats to the Petitioners.

5. As the Respondents did not comply with the consent terms, the Petitioners took out Chamber

Summons No..1213 of 2004. By an order dated 9.9.2004 the leaned single Judge granted the Chamber Summons in terms of prayer (a), which reads as under :-

> "a). That pending hearing and final disposal of the above Execution Application, the Court Receiver,High Court, Bombay be appointed as Receiver in respect of the 22 flats in the building namely Golden Heights, "A-Wing", Anant Patel Marg, Dadar, Bombay 400 031 with a direction to appoint the Petitioners as his Agents without payment of any royalty and/or security deposit and to hand over the possession of the said 22 flats to the Petitioners as his Agents."

6. The learned Appellate Court by an order dated 17.9.2004 in Appeal No.577 of 2004 confirmed the said order subject to certain variations in respect of some of the flats.

7. Thereafter the learned single Judge by an order dated 4.5.2005 disposed of the said Chamber Summons No.1213 of 2004 holding that nothing remained in the matter in view of the orders dated 9.9.2004 and 17.9.2004.

8. As stated above four flats referred to in prayer (a) of the present Chamber Summons have been handed over. There is no stay either of the consent terms or of the order in terms of the consent terms. There is nothing else on record which restrains the Petitioners from deriving the benefit under the said consent terms.

9. In the circumstances, the Chamber Summons is made absolute in terms of prayer (b). Needless to state that the Court Receiver will hand over the remaining flats from out of the said 22 flats in his possession.